



UNITED STATES DEPARTMENT OF COMMERCE

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/376,774	08/17/99	FUNG	D0057

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HM12/0618

EXAMINER
ZARA, J

ART UNIT	PAPER NUMBER
1635	10

DATE MAILED: 06/18/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

File

## Advisory Action

Application No.

09/376,774

Applicant(s)

Fung et al.

Examiner

Zara, Jane

Art Unit

1635



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED Jun 6, 2001 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid the abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

### THE PERIOD FOR REPLY [check only a) or b)]

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b) ☒ In view of the early submission of the proposed reply (within two months as set forth in MPEP § 706.07 (f)), the period for reply expires on the mailing date of this Advisory Action, OR continues to run from the mailing date of the final rejection, whichever is later. In no event, however, will the statutory period for the reply expire later than SIX MONTHS from the mailing date of the final rejection.

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will be entered upon the timely submission of a Notice of Appeal and Appeal Brief with requisite fees.
3. ☐ The proposed amendment(s) will not be entered because:
- a) ☐ they raise new issues that would require further consideration and/or search. (See NOTE below);
- b) ☐ they raise the issue of new matter. (See NOTE below);
- c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- d) ☐ they present additional claims without cancelling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

4. ☒ Applicant's reply has overcome the following rejection(s):  
Claim 3 has been canceled by the instant amendment and therefore the rejection of claim 3 is rendered moot.
5. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in separate, timely filed amendment cancelling the non-allowable claim(s).
6. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
Claim 2 is not enabled over the scope claimed. Please see attached.
7. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
8. ☒ For purposes of Appeal, the status of the claim(s) is as follows (see attached written explanation, if any):  
Claim(s) allowed: 1  
Claim(s) objected to: \_\_\_\_\_  
Claim(s) rejected: 2 (Reasons of Record)
9. ☐ The proposed drawing correction filed on \_\_\_\_\_ a) ☐ has b) ☐ has not been approved by the Examiner.
10. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_
11. ☐ Other: \_\_\_\_\_

ANDREW WANG  
PRIMARY EXAMINER

Art Unit: 1635

*Attachment*

The amendment filed June 6, 2001, Paper No. 9, under 37 CFR 1.116 in reply to the final rejection has been considered but is not deemed to place the application in condition for allowance and will not be entered because: Claim 2 stands rejected under 35 U.S.C. 112, first paragraph, for lacking enablement over the scope claimed as set forth in final Office action mailed April 9, 2001, Paper No. 8. No evidence has been provided in the instant specification for the achievement of delivery to a target cell or tissue in an organism comprising the administration of the pDATH-X vector which has a gene of interest cloned into its cloning site and further whereby localized, temporal expression of said gene under control of a heat inducible promoter has been obtained in that organism.